IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.4378 of 2004

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RALLI ENGINE LTD. & 1 - Petitioner(s)
Versus
CENTRAL BOARD OF EXCISE AND CUSTOM, & 2-Respondent(s)

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Appearance :
MR PARESH M DAVE for Petitioner(s) : 1 - 2.
SERVED BY RPAD - (R) for Respondent(s) : 1,1.2.1
MS DHARMISHTA RAVAL for Respondent(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
MR YN RAVANI for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. This petition is primarily based on the challenge to the discrimination that the petitioner is facing in respect of the

product manufactured by the petitioner. The case of the petitioner is that for the very same product manufactured by the petitioner, manufacturers in the State of Maharashtra and Tamil Nadu are not being subjected to the Excise Duty as the product is classified under Heading No.84.24, but the petitioner is being subjected to duty on account of classification of same product under Heading No.84.07.

2. After hearing the parties at length on 27th April, 2004 the petition came to be admitted on this limited count. While passing the order for interim relief the Court has made an elaborate order regarding contentions of both the sides as well as the treatment being meted out to different manufacturers in different States i.e. States other than State of Gujarat. Accordingly, the respondent authorities were restrained from recovering Excise Duty from the petitioner-company in relation to the manufactured product otherwise than at the rate at which the Central Excise authorities are recovering duties from the manufacturers of the same product in other States. At the same time it was clarified that it would be open to the Central Board of Excise & Customs to consider the matter afresh for giving uniform treatment to the manufacturers of the same product all over the country.

3. Today when the matter is taken up for final hearing the Court is informed that in September, 2005 a draft circular order was circulated amongst field formation and trade by the Central Board of Excise & Customs soliciting the views of the field formation and trade on such draft order. It appears that after receiving representation from different persons, including the petitioner, the Board has not taken any further action in the matter as reported by the learned counsel for the respondent authorities. He has made this statement on instructions.

4. In the aforesaid set of facts and circumstances which remain uncontroverted, the petitioner succeeds on the limited ground of discrimination and it is not necessary for the Court to enter into any discussion on merits of the issue of classification.

5. Accordingly, for the elaborate reasons set out in the order dated 27th April, 2004 made by this Court, the petition is allowed. Interim relief granted vide the said order dated 27th April, 2004 to continue as the final relief with the same directions as made in Paragraph No.10 of the order dated 27th April, 2004.

6. The petition stands disposed of accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
1. [D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**